

D. Victoria Baranetsky (SBN 311892)
THE CENTER FOR INVESTIGATIVE REPORTING
 1400 65th St., Suite 200
 Emeryville, CA 94608
 Telephone: (510) 809-3160
 Fax: (510) 849-6141
vbaranetsky@revealnews.org

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND-SAN FRANCISCO DIVISION

THE CENTER FOR INVESTIGATIVE
REPORTING and AURA BOGADO,

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

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Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF**

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief. The Center for Investigative Reporting (“CIR”) and Aura Bogado (together, “Plaintiffs”) seek expedited processing and release of agency records requested from Defendant United States Immigration and Customs Enforcement and (“ICE”).

2. On November 27, 2018, Plaintiffs submitted a Freedom of Information Act request to ICE seeking a single record: A contract between ICE and MVM, Inc. (“MVM”), a company which, according to ICE officials, was contractually authorized to transport migrant children between U.S. Customs and Border Protection custody and U.S. Health and Human Services custody (the “MVM Contract”).

3. To date, ICE has failed to comply with the Freedom of Information Act’s requirements, including its statutory deadlines, and has provided no response to Plaintiffs.

4. ICE’s failure to provide any response is of particular public concern because the manner in which migrant children—many of which have been forcibly separated from their parents by employees or agents of the U.S. government—are being cared for remains obscure despite the profound impact such activities may have on the minor children, their families, and the employees and agents of the U.S. government charged with protecting the minor children.

5. The public interest in the release of the MVM Contract is especially substantial as it may implicate hundreds if not thousands of minors who may be, or have been, within the custody of the employees or agents of the U.S. government or MVM operating pursuant to the contractual provisions of the MVM Contract.

6. Plaintiffs now ask the Court for an injunction requiring ICE to promptly release the MVM Contract.

PARTIES

7. Plaintiff CIR publishes *Reveal*, an online news site at revealnews.org, and produces *Reveal*, a weekly public radio show with approximately 1 million listeners a week. Founded in 1977, as the first national investigative news organization, CIR has received multiple awards for its reporting. CIR is a non-profit established under the laws of the State of California, with its primary office in Emeryville, California.

8. Aura Bogado is a staff reporter for *Reveal* and an employee of CIR.

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9. Defendant ICE is an “agency” of the United States within the meaning of 5 U.S.C. §552(f)(1). It has its headquarters in Washington, D.C. and field offices all over the country, including in Oakland and San Francisco, California. ICE is charged with enforcing immigration laws, among other responsibilities. Upon information and belief, ICE has records responsive to the FOIA request.

JURISDICTION

10. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346, and 5 U.S.C. §§ 701–706.

VENUE AND INTRADISTRICT ASSIGNMENT

11. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402. Plaintiff CIR has its principal place of business in this district.

12. Assignment to the Oakland Division is proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events giving rise to this action occurred in Alameda County, where Plaintiffs are located.

FACTUAL BACKGROUND

Reporting on U.S. Detention of Migrant Children

13. On July 6, 2018, *Reveal* published an investigation finding that a U.S. defense contractor detained dozens of immigrant children inside a vacant Phoenix office building with few basic amenities. Aura Bogado, Ziva Branstetter, and Vanessa Swales, *Defense Contractor Detained Migrant Kids in Vacant Phoenix Office Building*, REVEAL, July 6, 2018, <https://bit.ly/2KSDw3l>.

14. The building was leased in March by MVM, a Virginia-based defense contractor that has received contracts with the federal government up to \$248 million to transport immigrant children since 2014. *Id.*

15. Since 2007, MVM has entered into contracts with the federal government with a value of approximately \$1.5 billion. *Id.* MVM has entered into contracts with numerous government agencies, including ICE, the U.S. Marshals Service and the Drug Enforcement

Administration; the National Institutes of Health; the National Oceanic and Atmospheric Administration; and the Smithsonian Institution. *Id.*

16. Other federal contracts with MVM have previously been publicly disclosed. For instance, MVM entered into a \$8 million five-year contract with the Office of Refugee Resettlement which provides that the company was required to “maintain readiness” and provide “emergency support services” to the agency. *Id.*

17. ICE’s activities regarding the detention of migrants—and migrant children, in particular—have been of extreme public interest since at least January 25, 2017, when President Donald Trump issued Executive Order No. 13767, which instructs the Secretary of Homeland Security to apply expedited removal to the fullest extent of the law. *See* Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (2017).

18. Indeed, numerous media reports have documented the public interest in ICE’s detention of migrants. *See, e.g.,* Michael D. Shear and Ron Nixon, *New Trump Deportation Rules Allow Far More Expulsions*, N.Y. TIMES, Feb. 22, 2017, <http://nyti.ms/2m4RAe4>; Michael Sangiacomo and Alfredo Corchado, *Injured man held hostage by cartel after ICE ‘dumped him’ at Texas border, lawyer says*, DALLAS NEWS, Jul. 28, 2017, <http://bit.ly/2z7BnsA>; Elise Foley, *ICE’s ‘Targeting Enforcement Operation’ Mostly Arrests Immigrants It Wasn’t Targeting*, HUFFINGTON POST, Aug. 1, 2017, <http://bit.ly/2oFR9ZR>.

19. *Reveal* has produced numerous news stories—in both radio and print formats—relating to the detention, custody, and care of migrant children. *See, e.g.,* Aura Bogado and Rachel de Leon, *Separated and Kept in an Office: How a 7-Year-Old Remembers Zero Tolerance*, REVEAL, November 5, 2018, <https://bit.ly/2RXB0bG>; Vanessa Swales, *ICE Gave \$185 Million Deal to Defense Contractor Under Investigation for Housing Kids in Office*, REVEAL, October 15, 2018, <https://bit.ly/2P4tuy8>; REVEAL and PRX, *When They Took My Son*, September 29, 2018, <https://bit.ly/2GN0gj9>; Aura Bogado, *Exclusive: Immigrant Kids Held in Second Phoenix Office Seen Bathing in Sinks*, REVEAL, July 17, 2018, <https://bit.ly/2uFHaUo>; Aura Bogado, *Government Contractor Acknowledges Migrant Children Were Held Overnight in Vacant Office Building*, REVEAL, July 11, 2018, <https://bit.ly/2E89x3s>; Valeria Fernández, *Politicians Call for Investigation*

1 *About Migrant Children Held in Vacant Arizona Office Building*, REVEAL, July 10, 2018,
2 <https://bit.ly/2E8MpSo>; Aura Bogado and Ziva Branstetter, REVEAL, July 8, 2018,
3 <https://bit.ly/2tlGG5B>.

4 20. As part of its reporting, Plaintiffs contacted ICE regarding MVM's housing of
5 migrant children overnight in vacant office space. On July 3, 2018, ICE press secretary Jennifer
6 Elzea responded to Plaintiffs' inquiries by email and noted the existence of a contract between ICE
7 and MVM. Ms. Elzea wrote: "According to the U.S. Immigration and Customs Enforcement
8 contract with MVM, Inc., the company is authorized to use their office space as waiting areas for
9 minors awaiting same-day transportation between US Customs and Border Protection custody and
10 US Health and Human Services custody. These offices are not overnight housing facilities, per the
11 contract with ICE." Ms. Elzea further informed Plaintiffs that to obtain a copy of the contract, they
12 would "need to submit a FOIA request (or search [ICE's] FOIA reading room) for a full version of
13 the contract document."

14 21. On July 4, 2018, Plaintiffs submitted a FOIA request to ICE seeking the MVM
15 Contract. The request identified the contract by quoting the description Ms. Elzea had provided to
16 Plaintiffs a day earlier.

17 22. On July 18, 2018, ICE acknowledged receipt of the request and denied the request
18 in full. ICE stated that "we determined that your request is too broad in scope, did not specifically
19 identify the records which you are seeking, or only posed questions to the agency." That same day,
20 July 18, 2018, Plaintiffs responded to ICE, offering to provide ICE with any additional information
21 it might need to locate the contract.

22 23. On November 13, 2018, Plaintiffs again wrote to ICE to request that the agency
23 publicly release the MVM Contract, and again offering to assist ICE in locating the MVM
24 Contract. Plaintiffs also noted that MVM Contract would have been entered into "as early as
25 2014."

26 24. On November 20, 2018, ICE responded, stating: "This request has been closed as of
27 08/13/18."

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Plaintiffs' FOIA Request for the MVM Contract

25. On November 27, 2018, Plaintiffs filed a new, more detailed FOIA request for the MVM Contract. The request noted that ICE press secretary Jennifer Elzea had identified the contract to Plaintiffs on July 3, 2018 and suggested that Plaintiffs file a FOIA request (or search ICE's reading room) to obtain it. The request also quoted Ms. Elzea's specific description of the contract: "According to the U.S. Immigration and Customs Enforcement contract with MVM, Inc., the company is authorized to use their office space as waiting areas for minors awaiting same-day transportation between US Customs and Border Protection custody and US Health and Human Services custody. These offices are not overnight housing facilities, per the contract with ICE." The request further quoted Ms. Elzea's suggestion that, to obtain a copy of the contract, Plaintiffs would "need to submit a FOIA request (or search [ICE's] FOIA reading room) for a full version of the contract document." Finally, the request noted that "[t]he contract would have been signed between ICE (or its representatives) and MVM (or its representatives) as early as 2014, although it may have been modified at a later time. The substance of the contract references the use of MVM office areas as waiting areas for minors awaiting same-day transportation." A true and correct copy of Plaintiffs' FOIA request, dated November 27, 2018, is attached hereto as Exhibit 1.

26. ICE has failed to respond to Plaintiffs' FOIA request, dated November 27, 2018, within the statutory time frame required under the FOIA.

CAUSE OF ACTION

Violation of Freedom of Information Act

27. Plaintiffs repeat and reallege paragraphs 1–26.

28. ICE is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

29. ICE has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

30. ICE has failed to act on Plaintiffs' request within the 20 business days required by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i). Accordingly, Plaintiffs are deemed to have exhausted their

administrative remedies under FOIA.

31. Plaintiffs are entitled to an order compelling ICE to produce records responsive to the their FOIA request.

REQUESTED RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that Defendant ICE violated FOIA by failing to comply with the 20 business days required by FOIA and notifying Plaintiffs of any determination;
2. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;
3. Order Defendant ICE to provide the requested documents to Plaintiffs within 20 business days of the Court's order, or in the alternative, provide for expedited proceedings to adjudicate Plaintiffs' rights under FOIA;
4. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and
5. Grant Plaintiffs such other and further relief as this Court may deem just and proper.

DATED: February 20, 2019

Respectfully submitted,

By: /s/ John Clopper

John D. Clopper (pro hac vice)
CLOPPER LAW PC
43 West 43rd St., Suite 95
New York, NY 10036
Telephone: (347) 752-7757
jclopper@clopperlaw.com

D. Victoria Baranetsky (SBN 311892)
THE CENTER FOR INVESTIGATIVE REPORTING
1400 65th St., Suite 200
Emeryville, CA 94608
Telephone: (510) 809-3160
Fax: (510) 849-6141
vbaranetsky@revealnews.org

Attorneys for Plaintiffs